

BRANCART & BRANCART
Christopher Brancart (SBN 128475)
Elizabeth Brancart (SBN 122092)
Post Office Box 686
Pescadero, CA 94060
Tel: (650) 879-0141
Fax: (650) 879-1103
cbrancart@brancart.com
ebrancart@brancart.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**EDITH MACIAS, individually and on
behalf of similarly situated
individuals; HOTON DURAN;
TIFFANY HUYNH; AURA MENDIETA;
WILLIAM LABOY; MIGUEL ACOSTA;
CRUZ ACOSTA; CUAUHEMOC
TORAL; TERESA VILLEGAS,
KAPIKA SALAMBUE and MARINA
DURAN,**

Plaintiffs,

vs.

**THOMAS J. TOMANEK; and
MARK GARIBALDI, individually
and doing business as THE
GARIBALDI COMPANY,**

Defendants.

Case No. C07-3437 JSW

**FIRST AMENDED CLASS ACTION
COMPLAINT; DEMAND FOR TRIAL
BY JURY; CERTIFICATION OF
INTERESTED ENTITIES OR
PERSONS**

CLASS ACTION

I. INTRODUCTION

1. In this action, plaintiffs, former tenants of the Rancho Luna & Rancho Sol Apartments, a large rental complex located in Fremont, California, claim that defendant Mark Garibaldi, doing business as The Garibaldi Company, violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, by engaging in a scheme or artifice to defraud or plan for obtaining money or property by means of false or fraudulent pretenses, representations or promises and other unlawful

1 acts in connection with improperly charging vacating tenants for the ordinary wear and
2 tear in their units, retaining tenants' security deposits and demanding additional
3 payments for alleged property damage upon move-out. Plaintiffs further claim that
4 defendant Mark Garibaldi, doing business as The Garibaldi Company, and defendant
5 Thomas J. Tomanek, have engaged in unlawful and unfair business practices in the
6 operation and management of the Rancho Luna & Sol Apartments in violation of
7 California Business & Professions Code § 17200, et seq., and other state laws. The
8 class representative plaintiff brings this action on behalf of herself and similarly situated
9 individuals.

10 **II. JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

11 2. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1331 in
12 that the claims alleged herein arise under the laws of the United States. This Court has
13 supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) to hear and determine
14 plaintiffs' state law claims because those claims are related to plaintiffs' federal law
15 claims and arise out of a common nucleus of related facts. Plaintiffs' state law claims
16 are related to plaintiffs' federal law claims such that those claims form part of the same
17 case or controversy under Article III of the United States Constitution. This Court has
18 supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) to hear and determine
19 plaintiffs' state law claims against defendant Thomas Tomanek because those claims
20 are so related to plaintiffs' federal law claims against defendant Mark Garibaldi that they
21 form part of the same case or controversy under Article III of the United States
22 Constitution.

23 3. Pursuant to Local Rule 3-2, venue is proper in the San Francisco Division
24 or Oakland Division because the claims alleged herein arose within Alameda County,
25 California.

26 **III. PARTIES**

27 4. Plaintiffs Edith Macias and Hoton Duran resided in apartment 246 in the
28 Rancho Luna section of the Rancho Luna & Rancho Sol Apartments between

1 November 1, 2004 and November 1, 2005. Plaintiff Edith Macias brings this suit on
2 behalf of herself and a class of similarly situated individuals.

3 5. Plaintiff Tiffany Huynh resided in apartment 115 in the Rancho Sol section
4 of the Rancho Luna & Rancho Sol Apartments between July 27, 2002, and October 3,
5 2005.

6 6. Plaintiff Aura Mendieta resided in apartment 104 in the Rancho Luna
7 section of the Rancho Luna & Rancho Sol Apartments between October 19, 2002, and
8 October 31, 2005.

9 7. Plaintiff William Laboy resided in apartment 108 in the Rancho Sol section
10 of the Rancho Luna & Rancho Sol Apartments between March 30, 2004, and April 1,
11 2005.

12 8. Plaintiffs Miguel Acosta and Cruz Acosta resided in apartment 202 in the
13 Rancho Luna section of the Rancho Luna & Rancho Sol Apartments between February
14 23, 2002 and April 4, 2006.

15 9. Plaintiffs Cuauhtemoc Toral and Teresa Villegas resided in apartment 205
16 in the Rancho Luna section of the Rancho Luna & Rancho Sol Apartments between
17 March 13, 2004, and March 30, 2005.

18 10. Plaintiff Kapika Salambue resided in apartment 230 in the Rancho Luna
19 section of the Rancho Luna & Rancho Sol Apartments between August 1, 2004, and
20 August 13, 2005.

21 11. Plaintiff Marina Duran resided in apartment 119 in the Rancho Luna
22 section of the Rancho Luna & Rancho Sol Apartments between December 2001 and
23 December 2005.

24 12. Plaintiffs are informed and believe and thereon allege that defendant
25 Thomas J. Tomanek owns the Rancho Luna & Rancho Sol Apartments and has done
26 so at all times relevant herein.

27 13. Plaintiffs are informed and believe and thereon allege that defendant Mark
28 Garibaldi, doing business as The Garibaldi Company, acts as the property manager

1 operating the Rancho Luna & Rancho Sol Apartments, and has done so at all times
2 relevant herein, employed by defendant Thomas J. Tomanek as his managing agent.
3 Defendant Mark Garibaldi, doing business as The Garibaldi Company employs agents
4 to assist him in the operation of the Rancho Luna & Rancho Sol Apartments. As used
5 herein, "The Garibaldi Company" refers to Mark Garibaldi, doing business as The
6 Garibaldi Company.

7 14. Plaintiffs are informed and believe and thereon allege that, at all times
8 mentioned herein, each and every defendant is and was, in doing the things
9 complained of herein, the agent of its co-defendants herein and was acting within the
10 scope of said agency and/or representation, and that each and every defendant herein
11 is jointly and severally responsible and liable to plaintiffs for the damages hereinafter
12 alleged.

13 **IV. FACTS**

14 **A. INTRODUCTION**

15 15. Pursuant to California Civil Code § 1950.5(e), a landlord may claim from a
16 tenant's security deposit only those amounts as are reasonably necessary (1) to
17 compensate the landlord for a tenant's default in the payment of rent; (2) to repair
18 damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or
19 by a guest or licensee of the tenant; (3) to clean the premises upon termination of the
20 tenancy as necessary to return the unit to the same level of cleanliness it was in at the
21 inception of the tenancy; or (4) to remedy future defaults by the tenant in any obligation
22 under the rental agreement to restore, replace, or return personal property or
23 appurtenances, exclusive of ordinary wear and tear, if the security deposit is authorized
24 to be applied thereto by the rental agreement. A landlord "may not assert a claim
25 against the tenant or the security for damages to the premises or any defective
26 conditions that preexisted the tenancy, for ordinary wear and tear or the effects thereof,
27 whether the wear and tear preexisted the tenancy or occurred during the tenancy, or for
28 the cumulative effects of ordinary wear and tear occurring during any one or more

1 tenancies.” California Civil Code § 1950.5(e).

2 16. Defendants have engaged in a pattern or practice of wrongfully
3 withholding the security deposits of vacating tenants as a method of funding
4 renovations and updates to units that have suffered only ordinary wear and tear during
5 the tenancy. Defendants unlawfully assert claims against tenants and their security
6 deposits for alleged damages to units at the Rancho Luna & Rancho Sol Apartments
7 that preexisted tenancy or consisted of ordinary wear and tear during the tenancy. This
8 unlawful practice is generally applicable to defendants’ former, current and future
9 tenants as a class.

10 **B. EDITH MACIAS**

11 17. On October 21, 2004, plaintiffs Edith Macias and Hoton Duran entered
12 into a written lease agreement with The Garibaldi Company at the Rancho Luna &
13 Rancho Sol Apartments for rental of apartment 246 in the Rancho Luna section of the
14 complex. Plaintiffs were assisted in the execution of the lease agreement by an
15 individual, whom plaintiffs are informed and believe was an employee of The Garibaldi
16 Company, who countersigned the lease agreement on behalf of The Garibaldi
17 Company. Pursuant to the agreement, Ms. Macias and Mr. Duran paid \$1,700 as a
18 security deposit before commencing their tenancy. Under the terms of the agreement,
19 The Garibaldi Company agreed to return the \$1,700 security deposit by mail within
20 three weeks of the tenants’ vacating the unit, less any charges for damage to the
21 premises, fixtures or furnishings, but not including charges for reasonable wear and
22 tear.

23 18. In giving The Garibaldi Company the \$1,700 security deposit, Ms. Macias
24 and Mr. Duran reasonably relied on The Garibaldi Company to abide by the terms of its
25 representations in the lease agreement and the law, including California Civil Code §
26 1950.5(e), and not to charge them for reasonable wear and tear to the unit.

27 19. The representation of The Garibaldi Company in the lease agreement
28 that it would not charge Ms. Macias and Mr. Duran for reasonable wear and tear to the

1 unit was false, or made with reckless disregard to its falsity, because The Garibaldi
2 Company intentionally followed a policy and practice of unlawfully charging vacating
3 tenants for reasonable wear and tear to their unit.

4 20. On November 1, 2005, Ms. Macias and Mr. Duran vacated apartment
5 246. Before vacating that apartment, Ms. Macias and Mr. Duran requested an initial
6 inspection by defendants. The purpose of that inspection was to allow Ms. Macias and
7 Mr. Duran the opportunity to remedy deficiencies identified by defendants in order to
8 avoid deductions from his security deposit. But defendants failed or refused to conduct
9 that inspection in accordance with California Civil Code § 1950.5(f)(1). At the time that
10 Ms. Macias and Mr. Duran vacated apartment 246, that dwelling had been returned to
11 the same condition, except for normal wear and tear, and same level of cleanliness as it
12 was at the inception of their tenancy.

13 21. Nonetheless, defendants unlawfully, and acting in bad faith, charged
14 \$2,818.75 for cleaning and damage to apartment 246, deducting that sum from the
15 security deposit paid by Ms. Macias and Mr. Duran. Defendants retained, and continue
16 to retain, the full amount of plaintiffs' security deposit. Because the charges exceed the
17 amount of the security deposit, defendants claim that Ms. Macias and Mr. Duran owe
18 defendants \$1,160.75. Defendants have sought to collect those unlawful charges from
19 Ms. Macias and Mr. Duran through the use of a collection agency, T.A. Ross
20 Collections. In July 2006, defendants placed the alleged debt with T.A. Ross
21 Collections for attempted collection. Since that time, T.A. Ross Collections has made a
22 report to the national credit reporting agencies regarding Ms. Macias, stating that the
23 alleged debt is in collection, resulting in a negative mark on Ms. Macias' credit report.

24 C. TIFFANY HUYNH

25 22. On July 27, 2002, plaintiff Tiffany Huynh entered into a written agreement
26 with The Garibaldi Company at the Rancho Luna & Rancho Sol Apartments for rental of
27 apartment 115 in the Rancho Sol section of the complex. Plaintiff was assisted in the
28 execution of the lease agreement by an individual, whom plaintiff is informed and

1 believes was an employee of The Garibaldi Company, who countersigned the lease
2 agreement on behalf of The Garibaldi Company. Pursuant to that agreement, Ms.
3 Huynh paid \$400 as a security deposit before commencing her tenancy. Under the
4 terms of the agreement, The Garibaldi Company agreed to return the \$400 security
5 deposit by mail within three weeks of the tenants' vacating the unit, less any charges for
6 damage to the premises, fixtures or furnishings, but not including charges for
7 reasonable wear and tear.

8 23. In giving The Garibaldi Company the \$400 security deposit, Ms. Huynh
9 reasonably relied on The Garibaldi Company to abide by the terms of its
10 representations in the lease agreement and the law, including California Civil Code §
11 1950.5(e), and not to charge her for reasonable wear and tear to the unit.

12 24. The representation of The Garibaldi Company in the lease agreement
13 that it would not charge Ms. Huynh for reasonable wear and tear to the unit was false,
14 or made with reckless disregard to its falsity, because The Garibaldi Company
15 intentionally followed a policy and practice of unlawfully charging vacating tenants for
16 reasonable wear and tear to their unit.

17 25. On October 3, 2005, Ms. Huynh vacated apartment 115. At the time that
18 Ms. Huynh vacated apartment 115, that dwelling had been returned to the same
19 condition, except for normal wear and tear, and same level of cleanliness as it was at
20 the inception of her tenancy.

21 26. Nonetheless, defendants unlawfully, and acting in bad faith, charged
22 \$452.04 for cleaning and damage to apartment 115, deducting that sum from Ms.
23 Huynh's security deposit. After deducting for charges from the security deposit,
24 defendants returned only \$50.45 to Ms. Huynh. Defendants retained, and continue to
25 retain, the remaining balance of plaintiff's security deposit.

26 **D. AURA MENDIETA**

27 27. On October 19, 2002, plaintiff Aura Mendieta entered into a written
28 agreement with The Garibaldi Company at the Rancho Luna & Rancho Sol Apartments

1 for rental of apartment 104 in the Rancho Luna section of the complex. Plaintiff was
2 assisted in the execution of the lease agreement by an individual, whom plaintiff is
3 informed and believes was an employee of The Garibaldi Company, who countersigned
4 the lease agreement on behalf of The Garibaldi Company. Pursuant to that agreement,
5 Ms. Mendieta paid \$400 as a security deposit before commencing her tenancy. Under
6 the terms of the agreement, The Garibaldi Company agreed to return the \$400 security
7 deposit by mail within three weeks of the tenants' vacating the unit, less any charges for
8 damage to the premises, fixtures or furnishings, but not including charges for
9 reasonable wear and tear.

10 28. In giving The Garibaldi Company the \$400 security deposit, Ms. Mendieta
11 reasonably relied on The Garibaldi Company to abide by the terms of its
12 representations in the lease agreement and the law, including California Civil Code §
13 1950.5(e), and not to charge her for reasonable wear and tear to the unit.

14 29. The representation of The Garibaldi Company in the lease agreement
15 that it would not charge Ms. Mendieta for reasonable wear and tear to the unit was
16 false, or made with reckless disregard to its falsity, because The Garibaldi Company
17 intentionally followed a policy and practice of unlawfully charging vacating tenants for
18 reasonable wear and tear to their unit.

19 30. On September 30, 2005, Ms. Mendieta gave written notice of intent to
20 move out and made a written request for an inspection of her unit prior to her move out.
21 The manager refused to conduct that inspection in accordance with California Civil
22 Code § 1950.5(f)(1). On October 31, 2005, Ms. Mendieta vacated apartment 104. At
23 the time that Ms. Mendieta vacated apartment 104, that dwelling had been returned to
24 the same condition, except for normal wear and tear, and same level of cleanliness as it
25 was at the inception of her tenancy.

26 31. Nonetheless, defendant unlawfully, and acting in bad faith, charged
27 \$652.16 for cleaning and damage to apartment 104, deducting that sum from Ms.
28 Mendieta's security deposit. Defendants retained, and continue to retain, the full

1 amount of plaintiff's security deposit. Because the charges exceed the amount of the
2 security deposit, defendants claim that Ms. Mendieta owes defendants \$252.16.
3 Subsequently, defendants referred that alleged debt to T.A. Ross Collections, which
4 attempted to collect it from Ms. Mendieta.

5 **E. WILLIAM LABOY**

6 32. On March 30, 2004, plaintiff William Laboy entered into a written
7 agreement with The Garibaldi Company at the Rancho Luna & Rancho Sol Apartments
8 for rental of apartment 108 in the Rancho Sol section of the complex. Plaintiff was
9 assisted in the execution of the lease agreement by an individual, whom plaintiff is
10 informed and believes was an employee of The Garibaldi Company, who countersigned
11 the lease agreement on behalf of The Garibaldi Company. Pursuant to that agreement,
12 Mr. Laboy paid \$400 as a security deposit before commencing his tenancy. Under the
13 terms of the agreement, The Garibaldi Company agreed to return the \$400 security
14 deposit by mail within three weeks of the tenants' vacating the unit, less any charges for
15 damage to the premises, fixtures or furnishings, but not including charges for
16 reasonable wear and tear.

17 33. In giving The Garibaldi Company the \$400 security deposit, Mr. Laboy
18 reasonably relied on The Garibaldi Company to abide by the terms of its
19 representations in the lease agreement and the law, including California Civil Code §
20 1950.5(e), and not to charge him for reasonable wear and tear to the unit.

21 34. The representation of The Garibaldi Company in the lease agreement
22 that it would not charge Mr. Laboy for reasonable wear and tear to the unit was false, or
23 made with reckless disregard to its falsity, because The Garibaldi Company
24 intentionally followed a policy and practice of unlawfully charging vacating tenants for
25 reasonable wear and tear to their unit.

26 35. On April 1, 2005, Mr. Laboy vacated apartment 108. Before vacating that
27 apartment, Mr. Laboy requested an initial inspection by defendant. The purpose of that
28 inspection was to allow Mr. Laboy the opportunity to remedy deficiencies identified by

1 defendants in order to avoid deductions from his security deposit. But defendants
2 failed or refused to conduct that inspection in accordance with California Civil Code §
3 1950.5(f)(1). At the time that Mr. Laboy vacated apartment 108, that dwelling had been
4 returned to the same condition, except for normal wear and tear, and the same level of
5 cleanliness as it was at the inception of his tenancy.

6 36. Nonetheless, defendants unlawfully, and acting in bad faith, charged
7 \$512.20 for cleaning and damage to apartment 108, deducting that sum from Mr.
8 Laboy's security deposit. Defendants retained, and continue to retain, the full amount
9 of plaintiff's security deposit. Because the charges exceed the amount of the security
10 deposit, defendants claim that Mr. Laboy owes defendants \$112.20 in cleaning and
11 damages charges.

12 **F. MIGUEL ACOSTA AND CRUZ ACOSTA**

13 37. On February 22, 2002, plaintiffs Miguel and Cruz Acosta entered into a
14 written lease agreement with The Garibaldi Company at the Rancho Luna & Rancho
15 Sol Apartments for rental of apartment 202 in the Rancho Luna section of the complex.
16 Plaintiffs were assisted in the execution of the lease agreement by an individual, whom
17 plaintiffs are informed and believe was an employee of The Garibaldi Company, who
18 countersigned the lease agreement on behalf of The Garibaldi Company. Pursuant to
19 the agreement, the Acostas paid \$1,150 as a security deposit before commencing their
20 tenancy. Under the terms of the agreement, The Garibaldi Company agreed to return
21 the \$1,150 security deposit by mail within three weeks of the tenants' vacating the unit,
22 less any charges for damage to the premises, fixtures or furnishings, but not including
23 charges for reasonable wear and tear.

24 38. In giving The Garibaldi Company the \$1,150 security deposit, the Acostas
25 reasonably relied on The Garibaldi Company to abide by the terms of its
26 representations in the lease agreement and the law, including California Civil Code §
27 1950.5(e), and not to charge them for reasonable wear and tear to the unit.

28 39. The representation of The Garibaldi Company in the lease agreement

1 that it would not charge the Acostas for reasonable wear and tear to the unit was false,
2 or made with reckless disregard to its falsity, because The Garibaldi Company
3 intentionally followed a policy and practice of unlawfully charging vacating tenants for
4 reasonable wear and tear to their unit.

5 40. On April 4, 2006, the Acostas vacated apartment 202. At the time that the
6 Acostas vacated apartment 202, that dwelling had been returned to the same condition,
7 except for normal wear and tear, and same level of cleanliness as it was at the
8 inception of their tenancy.

9 41. Nonetheless, defendant unlawfully, and acting in bad faith, charged the
10 Acostas \$1,180.43 for cleaning and damage to apartment 202, deducting that sum from
11 the Acostas' security deposit. Defendants retained the full amount of plaintiffs' security
12 deposit. Because the charges exceed the amount of the security deposit, defendants
13 claimed that the Acostas owe defendants \$30.43

14 42. After the filing of this lawsuit, on or about August 20, 2007 (over one year
15 after they vacated their unit), the Acostas received a check from The Garibaldi
16 Company in the amount of \$848.08, and a statement to the effect that the accounting of
17 the damages assessed against their security deposit had been in error.

18 **G. CUAUHEMOC TORAL AND TERESA VILLEGAS**

19 43. On March 13, 2004, plaintiffs Cuauhtemoc Toral and Teresa Villegas
20 entered into a written lease agreement with The Garibaldi Company at the Rancho
21 Luna & Rancho Sol Apartments for rental of apartment 205 in the Rancho Luna section
22 of the complex. Plaintiffs were assisted in the execution of the lease agreement by an
23 individual, whom plaintiffs are informed and believe was an employee of The Garibaldi
24 Company, who countersigned the lease agreement on behalf of The Garibaldi
25 Company. Pursuant to the agreement, Mr. Toral and Ms. Villegas paid a total security
26 deposit of \$1,100 in connection with their tenancy. Under the terms of the agreement,
27 The Garibaldi Company agreed to return the \$1,100 security deposit by mail within
28 three weeks of the tenants' vacating the unit, less any charges for damage to the

1 premises, fixtures or furnishings, but not including charges for reasonable wear and
2 tear.

3 44. In giving The Garibaldi Company the \$1,100 security deposit, Mr. Toral
4 and Ms. Villegas reasonably relied on The Garibaldi Company to abide by the terms of
5 its representations in the lease agreement and the law, including California Civil Code §
6 1950.5(e), and not to charge them for reasonable wear and tear to the unit.

7 45. The representation of The Garibaldi Company in the lease agreement
8 that it would not charge Mr. Toral and Ms. Villegas for reasonable wear and tear to the
9 unit was false, or made with reckless disregard to its falsity, because The Garibaldi
10 Company intentionally followed a policy and practice of unlawfully charging vacating
11 tenants for reasonable wear and tear to their unit.

12 46. On March 30, 2005, Mr. Villegas and Ms. Villegas vacated apartment 205.
13 Before vacating their apartment, the dwelling had been returned to the same condition,
14 except for normal wear and tear, and same level of cleanliness as it was at the
15 inception of their tenancy.

16 47. Nonetheless, defendant unlawfully, and acting in bad faith, charged for
17 cleaning and damage to apartment 205, and refused to return any portion of Mr. Toral
18 and Ms. Villegas' security deposit. Defendants retained, and continue to retain, the full
19 amount of plaintiffs' security deposit.

20 **H. KAPIKA SALAMBUE**

21 48. On or about August 2, 2004, plaintiff Kapika Salambue entered into a
22 written agreement with The Garibaldi Company at the Rancho Luna & Rancho Sol
23 Apartments for rental of apartment 230 in the Rancho Luna section of the complex.
24 Plaintiff was assisted in the execution of the lease agreement by an individual, whom
25 plaintiff is informed and believes was an employee of The Garibaldi Company, who
26 countersigned the lease agreement on behalf of The Garibaldi Company. Pursuant to
27 that agreement, Ms. Salambue paid \$500 as a security deposit before commencing her
28 tenancy. Under the terms of the agreement, The Garibaldi Company agreed to return

1 the \$500 security deposit by mail within three weeks of the tenants' vacating the unit,
2 less any charges for damage to the premises, fixtures or furnishings, but not including
3 charges for reasonable wear and tear.

4 49. In giving The Garibaldi Company the \$500 security deposit, Ms.
5 Salambue reasonably relied on The Garibaldi Company to abide by the terms of its
6 representations in the lease agreement and the law, including California Civil Code §
7 1950.5(e), and not to charge her for reasonable wear and tear to the unit.

8 50. The representation of The Garibaldi Company in the lease agreement
9 that it would not charge Ms. Salambue for reasonable wear and tear to the unit was
10 false, or made with reckless disregard to its falsity, because The Garibaldi Company
11 intentionally followed a policy and practice of unlawfully charging vacating tenants for
12 reasonable wear and tear to their unit.

13 51. On July 13, 2005, Ms. Salambue gave written notice of intent to move.
14 On August 13, 2005, Ms. Salambue vacated apartment 230. At the time that Ms.
15 Salambue vacated apartment 230, that dwelling had been returned to the same
16 condition, except for normal wear and tear, and same level of cleanliness as it was at
17 the inception of her tenancy.

18 52. Nonetheless, defendant unlawfully, and acting in bad faith, charged
19 \$1,415.73 for cleaning and damage to apartment 230, deducting that sum from Ms.
20 Salambue's security deposit. Defendants retained, and continue to retain, the full
21 amount of plaintiff's security deposit. Because the charges exceed the amount of the
22 security deposit, defendants claim that Ms. Salambue owes defendants \$915.73.

23 53. Ms. Salambue recently received a communication from T.A. Ross
24 Collections demanding payment of that \$915.73.

25 I. MARINA DURAN

26 54. In December 2001, plaintiff Marina Duran entered into a written
27 agreement with The Garibaldi Company at the Rancho Luna & Rancho Sol Apartments
28 for rental of apartment 119 in the Rancho Luna section of the complex. Plaintiff was

1 assisted in the execution of the lease agreement by an individual, whom plaintiff is
2 informed and believes was an employee of The Garibaldi Company. Pursuant to that
3 agreement, Ms. Duran paid \$99 as a security deposit before commencing her tenancy.
4 Under the terms of the agreement, The Garibaldi Company agreed to return the \$99
5 security deposit by mail within three weeks of the tenants' vacating the unit, less any
6 charges for damage to the premises, fixtures or furnishings, but not including charges
7 for reasonable wear and tear.

8 55. In giving The Garibaldi Company the \$99 security deposit, Ms. Duran
9 reasonably relied on The Garibaldi Company to abide by the terms of its
10 representations in the lease agreement and the law, including California Civil Code §
11 1950.5(e), and not to charge her for reasonable wear and tear to the unit.

12 56. The representation of The Garibaldi Company in the lease agreement
13 that it would not charge Ms. Mendieta for reasonable wear and tear to the unit was
14 false, or made with reckless disregard to its falsity, because The Garibaldi Company
15 intentionally followed a policy and practice of unlawfully charging vacating tenants for
16 reasonable wear and tear to their unit.

17 57. In December 2005, Ms. Duran gave notice and moved out of apartment
18 119. At the time that Ms. Duran vacated apartment 119, that dwelling had been
19 returned to the same condition, except for normal wear and tear, and same level of
20 cleanliness as it was at the inception of her tenancy.

21 58. Nonetheless, defendant unlawfully, and acting in bad faith, charged
22 \$1,084.86 for cleaning and damage to apartment 119, deducting that sum from Ms.
23 Duran's security deposit. Because the charges exceed the amount of the security
24 deposit, defendants claimed that Ms. Duran owes defendants \$985.86.

25 59. Thereafter, Ms. Duran received a demand for payment of the \$985.86
26 from defendants or their agent. She paid that amount for fear of being sent to
27 collections.

28 //

V. CLASS ACTION ALLEGATIONS

60. Class. Plaintiff Edith Macias seeks to bring this case on behalf of herself and on behalf of a class of similarly situated individuals. Ms. Macias, as class representative, seeks to represent a class of tenants who have resided at the Rancho Luna & Rancho Sol Apartments at any time since June 29, 2003, to the present, and future tenants, who have had, or in the future will have, claims asserted against them or their security deposits by defendants for alleged damages to units at the Rancho Luna & Rancho Sol Apartments.

61. Numerosity. The number of members of the class on whose behalf plaintiff sues is unknown, but it is estimated to be so numerous that joinder of all such members is impracticable. The number of persons possibly affected by defendants' unlawful policies and practices is indeterminate, but it is larger than can be addressed by joinder.

62. Commonality and Typicality. This suit poses questions of law and fact that are common to and affect the rights of all members of the class. The claims of the class representative are typical of the claims of class members as a whole, because defendants have implemented and pursued a policy or practice of unlawfully asserting claims against class members or their security deposits for alleged damages to units at the Rancho Luna & Rancho Sol Apartments that preexisted their tenancy or consisted of ordinary wear and tear during the tenancy, or to clean the premises beyond the same level of cleanliness it was in at the inception of the tenancy.

63. Adequacy of Representation. Plaintiff will fairly and adequately protect the interests of the class because plaintiff's counsel possesses the requisite resources and ability to prosecute this action and because the class representative's interests are consistent with the interests of the class.

64. Superiority. A class action is superior to other available methods for the fair and efficient adjudication of the controversy of the claims of the class plaintiffs. Common factual and legal questions so clearly predominate that class treatment is

appropriate. Those common questions include whether defendants have engaged in a pattern and practice of wrongfully withholding security deposits or asserting claims against tenants, and whether defendants engage in that practice in bad faith. The amount of punitive damages also is an issue common to the class.

65. General Applicability. Defendants have acted or refused to act on grounds generally applicable to each class member by pursuing their policy or practice of unlawfully asserting claims against class members or their security deposits for alleged damages to units at the Rancho Luna & Rancho Sol Apartments, thereby making appropriate final injunctive and declaratory relief with respect to the as a whole.

VI. CLAIMS FOR RELIEF

A. FIRST CLAIM FOR RELIEF

[RICO, 18 U.S.C. § 1961, *et seq.*]

***All Plaintiffs and the Plaintiff Class v. Mark Garibaldi,
doing business as The Garibaldi Company***

66. Plaintiffs and the plaintiff class reallege and incorporate by reference all previous paragraphs alleged in the complaint herein.

67. Defendant Mark Garibaldi, doing business as The Garibaldi Company, is a “person” within the meaning of 18 U.S.C. § 1961(3).

68. Thomas J. Tomanek, in his individual capacity, and as controlling owner of certain business entities, is in the business of owning and operating numerous apartment complexes in California and Nevada. Thomas J. Tomanek, an individual, is an “enterprise” within the meaning of 18 U.S.C. § 1961(4). In addition, or in the alternative, Thomas J. Tomanek, together with the various business entities which he controls, is an “enterprise” within the meaning of 18 U.S.C. § 1961(4). Both enterprises affect interstate commerce in that Thomas J. Tomanek is the owner of the multifamily rental housing at Rancho Luna & Rancho Sol Apartments, which receives federal HUD subsidies as housing for the elderly and/or under the Section 8 housing voucher program. Both enterprises, through their agent The Garibaldi Company, advertise the

1 Thomas J. Tomanek apartment complexes, including Rancho Luna & Rancho Sol
2 Apartments, on the internet on The Garibaldi Company website. In addition, or in the
3 alternative, the enterprises are engaged in interstate commerce, in that Thomas
4 Tomanek & Associates V, Inc. is the general partner of Indigo Creek Apartment, L.P., a
5 Nevada limited partnership, which owns the Indigo Creek Apartments, a complex
6 located in Las Vegas, Nevada, managed by The Garibaldi Company.

7 69. Mark Garibaldi is "associated" with Thomas J. Tomanek, an "enterprise,"
8 within the meaning of 18 U.S.C. § 1962(c), in that, doing business as The Garibaldi
9 Company, he has responsibility and control over the management of the Rancho Luna
10 & Rancho Sol Apartments, including collecting monthly rent payments, enforcing lease
11 provisions, operating the property, and refunding security deposits. Mark Garibaldi,
12 doing business as The Garibaldi Company, conducted or participated in the affairs of
13 Thomas J. Tomanek directly or indirectly, by managing and controlling the operation of
14 the apartment complexes owned by Thomas J. Tomanek, including but not limited to,
15 the Rancho Sol and Rancho Luna Apartments in Fremont, California, the Austin Creek
16 Apartments and Seabreeze Apartments in Vallejo, California, the Evergreen
17 Apartments and Orange Village Apartments in Redlands, California, the Golden Sands
18 and The Colony Apartments in Victorville, and the Indigo Creek Apartments in Las
19 Vegas, Nevada.

20 70. Mark Garibaldi, doing business as The Garibaldi Company, conducts or
21 participates, directly or indirectly, in the conduct of the enterprise's affairs through a
22 pattern of racketeering activity in violation of 18 U.S.C. § 1962(c). Mark Garibaldi,
23 doing business as The Garibaldi Company, has engaged in a pattern of racketeering
24 activity within the meaning of 18 U.S.C. § 1961(5), namely violations of 18 U.S.C. §
25 1341 (mail fraud). Mark Garibaldi, doing business as The Garibaldi Company, has
26 knowingly, wilfully and intentionally devised and implemented a scheme or artifice to
27 defraud, or for obtaining money or property from tenants of Rancho Sol and Rancho
28 Luna Apartments by means of false or fraudulent pretenses, representations or

1 promises within the meaning of 18 U.S.C. § 1341. Mark Garibaldi, doing business as
2 The Garibaldi Company, knowingly uses or causes the use of the United States mails in
3 order to further that fraudulent scheme.

4 71. The specific facts on which plaintiffs and the plaintiff class base their
5 allegation of a scheme to defraud or to obtain money by false pretenses are as follows:

6 a. As set forth in paragraphs 17-21, above, and reincorporated herein, at the
7 commencement of their tenancy at the Rancho Luna & Rancho Sol Apartments,
8 plaintiffs Edith Macias and Hoton Duran paid a \$1,700 security deposit to The
9 Garibaldi Company, in reasonable reliance on The Garibaldi Company's
10 representation that it would return the \$1,700 security deposit by mail within
11 three weeks of the tenants' vacating the unit, less any charges for damage to the
12 premises, fixtures or furnishings, but not including charges for reasonable wear
13 and tear. The representation of The Garibaldi Company in the lease agreement
14 that it would not charge Ms. Macias and Mr. Duran for reasonable wear and tear
15 to the unit was false, or made with reckless disregard to its falsity, because The
16 Garibaldi Company intentionally followed a policy and practice of unlawfully
17 charging vacating tenants for reasonable wear and tear to their unit.

18 b. On or about November 13, 2005, in furtherance of its scheme to defraud
19 or to obtain money from tenants of Rancho Sol and Rancho Luna Apartments by
20 means of false or fraudulent pretenses, representations or promises, The
21 Garibaldi Company mailed a statement to Edith Macias, stating that she owed
22 \$2,840.75 in damages for painting, carpet and vinyl replacement and 11 hours of
23 cleaning upon her move out from apartment 246. After applying her \$1,700.00
24 security deposit toward those alleged damages, the Garibaldi Company
25 demanded that Ms. Macias pay the remaining balance of \$1,140.75. The
26 November 13, 2005, mailing was in furtherance of the scheme to defraud
27 because the use of the United States mails was foreseeable and incident to an
28 essential part of the scheme – asserting defendant's claim to some or all of the

1 security deposit and for any additional funds due. California Civil Code §
2 1950.5(e) & (g).

3 c. When Ms. Macias refused to pay the additional amounts claimed due,
4 The Garibaldi Company referred the matter to its collections agency T.A. Ross
5 Collections in July 2006. Thereafter, T.A. Ross Collections used the United
6 States mails to attempt to collect the amounts claimed due to defendants.

7 d. As set forth in paragraphs 22-26, above, and reincorporated herein, at the
8 commencement of her tenancy at the Rancho Luna & Rancho Sol Apartments,
9 plaintiff Aura Mendieta paid a \$400 security deposit to The Garibaldi Company,
10 in reasonable reliance on The Garibaldi Company's representation that it would
11 return the \$400 security deposit by mail within three weeks of the tenants'
12 vacating the unit, less any charges for damage to the premises, fixtures or
13 furnishings, but not including charges for reasonable wear and tear. The
14 representation of The Garibaldi Company in the lease agreement that it would
15 not charge Ms. Mendieta for reasonable wear and tear to the unit was false, or
16 made with reckless disregard to its falsity, because The Garibaldi Company
17 intentionally followed a policy and practice of unlawfully charging vacating
18 tenants for reasonable wear and tear to their unit.

19 e. On or about November 7, 2005, in furtherance of its scheme to defraud or
20 to obtain money from tenants of Rancho Sol and Rancho Luna Apartments by
21 means of false or fraudulent pretenses, representations or promises, The
22 Garibaldi Company mailed a statement to Aura Mendieta, stating that she owed
23 \$652.16 for damages to carpets and vinyl and for eight hours of cleaning. After
24 applying her \$400.00 security deposit toward those alleged damages, The
25 Garibaldi Company demanded that Ms. Mendieta pay the remaining balance of
26 \$252.16 in full within 30 days. The November 7, 2005, mailing was in
27 furtherance of the scheme to defraud because the use of the United States mails
28 was foreseeable and incident to an essential part of the scheme – asserting

1 defendant's claim to some or all of the security deposit and for any additional
2 funds due. California Civil Code § 1950.5(e) & (g).

3 f. As set forth in paragraphs 27-31, above, and reincorporated herein, at the
4 commencement of her tenancy at the Rancho Luna & Rancho Sol Apartments,
5 plaintiff Tiffany Huynh paid a \$400 security deposit to The Garibaldi Company, in
6 reasonable reliance on The Garibaldi Company's representation that it would
7 return the \$400 security deposit by mail within three weeks of the tenants'
8 vacating the unit, less any charges for damage to the premises, fixtures or
9 furnishings, but not including charges for reasonable wear and tear. The
10 representation of The Garibaldi Company in the lease agreement that it would
11 not charge Ms. Mendieta for reasonable wear and tear to the unit was false, or
12 made with reckless disregard to its falsity, because The Garibaldi Company
13 intentionally followed a policy and practice of unlawfully charging vacating
14 tenants for reasonable wear and tear to their unit.

15 g. On or about October 10, 2005, in furtherance of its scheme to defraud or
16 to obtain money from tenants of Rancho Sol and Rancho Luna Apartments by
17 means of false or fraudulent pretenses, representations or promises, The
18 Garibaldi Company mailed a statement to Tiffany Huynh, stating that she owed
19 \$349.55 for carpet cleaning, housekeeping and dishwasher replacement upon
20 her move out from Apartment 115. The Garibaldi Company refunded only
21 \$50.45 of Ms. Huynh's \$400.00 security deposit. The October 10, 2005, mailing
22 was in furtherance of the scheme to defraud because the use of the United
23 States mails was foreseeable and incident to an essential part of the scheme –
24 asserting defendant's claim to some or all of the security deposit and for any
25 additional funds due. California Civil Code § 1950.5(e) & (g).

26 h. On or about August 9, 2005, in furtherance of its scheme to defraud or to
27 obtain money from tenants of Rancho Sol and Rancho Luna Apartments by
28 means of false or fraudulent pretenses, representations or promises, The

1 Garibaldi Company mailed a statement to Nestor C.-H., stating that he owed
2 \$1,439.04 in alleged "move out damages," upon his move out from apartment.
3 The Garibaldi Company demanded that Mr. C.-H. make payment within 24
4 hours, and further instructed him to "contact the office to set up payment
5 arrangements." The August 9, 2005, mailing was in furtherance of the scheme
6 to defraud because the use of the United States mails was foreseeable and
7 incident to an essential part of the scheme – asserting defendant's claim to some
8 or all of the security deposit and for any additional funds due. California Civil
9 Code § 1950.5(e) & (g).

10 i. As set forth in paragraphs 32-59, above, and reincorporated herein, at the
11 commencement of their tenancies at the Rancho Luna & Rancho Sol
12 Apartments, plaintiffs William Laboy, Cuauhtemoc Toral, Teresa Villegas, Miguel
13 Acosta, Cruz Acosta, Kapika Salambue and Marina Duran, and the members of
14 the plaintiff class, each paid security deposits to The Garibaldi Company, in
15 reasonable reliance on The Garibaldi Company's representation that it would
16 return those security deposit by mail within three weeks of the tenants' vacating
17 the unit, less any charges for damage to the premises, fixtures or furnishings, but
18 not including charges for reasonable wear and tear. The representation of The
19 Garibaldi Company in the lease agreement that it would not charge plaintiffs for
20 reasonable wear and tear to the unit was false, or made with reckless disregard
21 to its falsity, because The Garibaldi Company intentionally followed a policy and
22 practice of unlawfully charging vacating tenants for reasonable wear and tear to
23 their unit. Plaintiffs are informed and believe that The Garibaldi Company mailed
24 security deposit accountings to each of the other individual plaintiffs and the
25 members of the plaintiff class, asserting defendant's claim to some or all of the
26 security deposit and for any additional funds due, and that those mailings were in
27 furtherance of defendant's scheme to defraud or to obtain money from tenants of
28 Rancho Sol and Rancho Luna Apartments by means of false or fraudulent

1 pretenses, representations or promises. Defendant, however, is in possession of
 2 the documents showing those mailings, which plaintiffs do not have access to at
 3 this time.

4 72. As a result of the racketeering activity of Mark Garibaldi, doing business
 5 as The Garibaldi Company, plaintiffs and members of the plaintiff class who have
 6 vacated their units at the complex have suffered injury, including injury to their property,
 7 by reason of his violation of 18 U.S.C. § 1962. The security deposits withheld by
 8 defendant, and the additional amounts claimed, were all or in part based on damage
 9 due to reasonable wear and tear. Accordingly, plaintiffs and members of the plaintiff
 10 class who have vacated the complex are entitled to and seek treble damages.

11 73. There now exists an actual controversy between the parties regarding
 12 defendant Mark Garibaldi's duties under the applicable laws. Accordingly, plaintiffs and
 13 members of the plaintiff class are entitled to declaratory relief.

14 74. Unless enjoined, defendant will continue to engage in the unlawful acts
 15 and practices described above. Plaintiffs and members of the plaintiff class have no
 16 adequate remedy at law. Plaintiffs and class plaintiffs are now suffering and will
 17 continue to suffer irreparable injury from defendant Mark Garibaldi's unlawful acts
 18 practices unless relief is provided by this Court. The alleged debts of Ms. Macias and
 19 other plaintiffs and class members have been sent to collections, and collection activity
 20 is ongoing. Accordingly, plaintiffs and class plaintiffs are entitled to injunctive relief.

21 **B. SECOND CLAIM FOR RELIEF**

22 **[California Unfair Business Practices]**

23 ***All Plaintiffs and the Plaintiff Class v. All Defendants***

24 75. Plaintiffs and the plaintiff class reallege and incorporate by reference all
 25 previous paragraphs alleged in the complaint herein.

26 76. In acting as herein alleged, defendants have engaged in a pattern or
 27 practice of unlawful and unfair conduct in the operation of the Rancho Luna & Rancho
 28 Sol Apartments, and therefore have engaged in acts of unfair competition as the same

1 is defined in California Business and Professions Code § 17200, et seq.

2 77. The acts of unfair competition in which defendants have engaged include,
3 but are not limited to, violating Civil Code § 1950.5 governing the return and retention of
4 security deposits, and by engaging in unfair policies and practices with respect to
5 making claims against vacating tenants and vacating tenants' security deposits for
6 alleged damage to their units.

7 78. In bringing this action, plaintiffs and the plaintiff class are acting in the
8 interest of themselves and the general public pursuant to the California Business and
9 Professions Code § 17204.

10 79. Plaintiffs and the plaintiff class seek injunctive relief ordering defendants
11 to stop their unlawful practices and restitution of the security deposits wrongfully
12 withheld and the charges unlawfully assessed against them by defendants.

13 **C. THIRD CLAIM FOR RELIEF**

14 **[California Civil Code § 1950.5]**

15 ***All Plaintiffs and the Plaintiff Class v. All Defendants***

16 80. Plaintiffs and the plaintiff class reallege and incorporate by reference all
17 previous paragraphs alleged in the complaint herein.

18 81. Defendants' course of conduct described above injured plaintiffs and the
19 members of the plaintiff class who have vacated the complex by failing to comply with
20 the requirements of Civil Code § 1950.5, making defendants liable for actual damages.

21 82. Defendants acted in bad faith towards plaintiffs and the members of the
22 plaintiff class who have vacated the complex within the meaning of Civil Code §
23 1950.5(l), entitling plaintiffs and those members of the plaintiff class to damages of up
24 to twice the amount of their security deposits, in addition to actual damages.

25 83. Defendants acted with oppression, fraud and malice in engaging in the
26 business practices described above, such that plaintiffs and those members of the
27 plaintiff class are entitled to punitive damages in an amount to be established at trial.

28 //

D. FOURTH CLAIM FOR RELIEF

[Fraud]

All Plaintiffs and the Plaintiff Class v. All Defendants

84. Plaintiffs and the plaintiff class reallege and incorporate by reference all previous paragraphs alleged in the complaint herein.

85. As alleged above in paragraph 71 and the previous paragraphs incorporated therein, defendant Mark Garibaldi, doing business as The Garibaldi Company, has engaged in a practice of making false representations to plaintiffs and members of the plaintiff class with respect to the return of their security deposits. Defendant and his agents knew that those representations were false, or acted with reckless disregard as to their falsity.

86. By making those representations, defendant and his agents intended to induce plaintiffs and the plaintiff class to entrust defendant with their security deposits, as alleged above in paragraph 71 and the previous paragraphs incorporated therein. Plaintiffs and the plaintiff class justifiably relied upon those misrepresentations.

87. As a result of defendants' wrongful conduct, plaintiffs and the members of the plaintiff class who have vacated the complex have suffered and continue to suffer economic losses, and other general and specific damages, all in an amount to be determined according to proof at the time of trial.

88. In doing those unlawful acts and making those representations, defendant Mark Garibaldi, doing business as The Garibaldi Company, was acting as the agent of Thomas J. Tomanek within the scope of his agency, thus making Thomas J. Tomanek vicariously liable for that conduct as principal.

89. Defendants acted with oppression, fraud and malice in engaging in the business practices described above, such that plaintiffs and the plaintiff class are entitled to punitive damages in an amount to be established at trial.

90. Defendant Thomas J. Tomanek, as principal, is vicariously liable for the fraudulent acts of its agent, Mark Garibaldi, doing business as The Garibaldi Company,

1 conducted in the course of their agency relationship, and for all compensatory damages
 2 awarded by the jury. Thomas J. Tomanek, as owner of the Rancho Luna & Rancho
 3 Sol Apartments, knew or should have known of the fraudulent conduct of its agent Mark
 4 Garibaldi, doing business as The Garibaldi Company, but continued to employ him to
 5 manage the Rancho Luna & Rancho Sol Apartments, thus making Thomas J. Tomanek
 6 vicariously liable for punitive damages.

7 **E. FIFTH CLAIM FOR RELIEF**

8 **[Breach of the Implied Covenant of Good Faith** 9 **and Fair Dealing re Lease Agreements]**

10 ***All Plaintiffs and the Plaintiff Class v. All Defendants***

11 91. Plaintiffs and the plaintiff class reallege and incorporate by reference all
 12 previous paragraphs alleged in the complaint herein.

13 92. Defendants breached the implied covenant of good faith and fair dealing
 14 implied in the lease agreements with plaintiffs and the plaintiff class, their tenants at the
 15 Rancho Luna & Rancho Sol Apartments by allowing Mark Garibaldi, doing business as
 16 The Garibaldi Company, to carry out the fraudulent scheme against plaintiffs and the
 17 plaintiff class.

18 93. Plaintiffs and the plaintiff class performed their obligations under the
 19 parties' lease agreements, but defendants' fraudulent scheme unfairly deprived
 20 plaintiffs and the plaintiff class of the benefits of the lease agreement, namely the right
 21 not to be charged for ordinary wear and tear to the property, for damages preexisting
 22 their tenancy, or cleaning to bring the unit to a higher level of cleanliness than at the
 23 inception of the lease.

24 94. As a result of defendants' wrongful conduct, plaintiffs and the members of
 25 the plaintiff class who have vacated the complex have suffered and continue to suffer
 26 economic losses and other general and specific damages, including emotional distress
 27 damages, all in an amount to be determined according to proof at the time of trial.

28 95. Defendants acted with oppression, fraud and malice in engaging in the

1 business practices described above, such that plaintiffs and the plaintiff class are
2 entitled to punitive damages in an amount to be established at trial.

3 96. Defendant Thomas J. Tomanek, as principal, is vicariously liable for the
4 unlawful conduct of his agent, Mark Garibaldi, doing business as The Garibaldi
5 Company, conducted in the course of their agency relationship, and for all
6 compensatory damages awarded by the jury. Thomas J. Tomanek, as owner of the
7 Rancho Luna & Rancho Sol Apartments, knew or should have known of the unlawful
8 conduct of its agent Mark Garibaldi, doing business as The Garibaldi Company, but
9 continued to employ him to manage the Rancho Luna & Rancho Sol Apartments, thus
10 making Thomas J. Tomanek vicariously liable for punitive damages.

11 **F. SIXTH CLAIM FOR RELIEF**

12 **[UNJUST ENRICHMENT]**

13 ***All Plaintiffs and the Plaintiff Class v. All Defendants***

14 97. Plaintiffs reallege and incorporate by reference all previous paragraphs
15 alleged in the complaint herein.

16 98. In doing the wrongful acts alleged herein, defendants unjustly obtained a
17 benefit from plaintiffs in the form of payments neither due nor owing, which defendants
18 retained. Defendants accepted and has retained those payments from plaintiffs for
19 their own use, unjustly depriving plaintiffs of those funds. Allowing defendants to retain
20 those benefits would be inequitable. Those benefits belong, in equity and good
21 conscience, to plaintiffs.

22 99. Accordingly, plaintiffs and the plaintiff class pray for an order of this Court
23 directing defendants to disgorge all profits, benefits and other compensation obtained
24 by defendants from plaintiff and the plaintiff class by their unlawful conduct, and
25 imposing a constructive trust thereon.

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G. SEVENTH CLAIM FOR RELIEF

[DEFAMATION]

Plaintiffs Edith Macias, Hoton Duran, Aura Mendieta

and Kapika Salambue v. All Defendants

100. Plaintiffs Edith Macias, Hoton Duran, Aura Mendieta and Kapika Salambue reallege and incorporate by reference all previous paragraphs alleged in the complaint herein.

101. In or about July 2006, defendants defamed plaintiff Edith Macias and plaintiff Hoton Duran and plaintiff Aura Mendieta by communicating to T.A. Ross Collections that each refused to pay a just debt, and authorizing T.A. Ross Collections to commence collection efforts against them. At some time within the last 12 months, at a time unknown to plaintiffs, defendants defamed plaintiff Kapika Salambue by communicating to T.A. Ross Collections that she refused to pay a just debt, and authorizing T.A. Ross Collections to commence collection efforts against her. Those alleged debts were not just debts, in that they were the result of defendants' unlawful pattern and practice of withholding tenants' security deposits and making unlawful claims against those deposits, as set forth herein. Each of those communications was defamatory on its face, causing damage to plaintiffs' credit ratings, and causing them to suffer general and special damages to be proved at trial.

H. EIGHTH CLAIM FOR RELIEF

[Negligence]

All Plaintiffs and the Plaintiff Class v. All Defendants

102. Plaintiffs and the plaintiff class reallege and incorporate by reference all previous paragraphs alleged in the complaint herein.

103. Defendants owed plaintiffs and the plaintiff class a duty to operate Rancho Luna & Rancho Sol Apartments in a manner that was free from unlawful conduct and consistent with the duty of care, and to hire, train, supervise and discipline their employees to fulfill that duty. Defendants, acting individually and through their

1 agents, negligently violated those duties by unlawfully withholding plaintiffs' security
2 deposits.

3 104. As a legal result of defendants' negligent conduct, plaintiffs and the
4 plaintiff class suffered economic losses, emotional distress, including bodily injury such
5 as headaches, stomachaches and loss of sleep, and other special and general
6 damages according to proof.

7 **VII. RELIEF**

8 Wherefore, plaintiffs and all class members pray for the following relief against
9 defendants:

10 1. That the classes described above be certified in this action pursuant to
11 Rule 23 of the Federal Rules of Civil Procedure;

12 2. For an order declaring unlawful defendants' pattern and practices
13 complained of herein;

14 3. For an order enjoining all unlawful practices complained about herein;

15 4. For an order requiring defendants to make restitution to plaintiffs and the
16 plaintiff class;

17 5. For an order awarding actual or compensatory damages to plaintiffs and
18 the plaintiff class according to proof;

19 6. For an order awarding statutory damages and treble damages to plaintiffs
20 and the plaintiff class according to proof;

21 7. For an order awarding punitive damages to plaintiffs and the plaintiff class
22 according to proof;

23 8. For an order requiring defendants to disgorge their profits and benefits
24 obtained unjustly from plaintiffs and the plaintiff class, and imposing a constructive trust
25 thereon;

26 //

27 //

28 //

1 9. For costs of suit, including reasonable attorneys' fees; and,

2 10. For all such other relief as the Court deems just.

3 Dated: September 28, 2007.

4 Respectfully submitted,

5 BRANCART & BRANCART

6 /s/ Elizabeth Brancart

7 Elizabeth Brancart

8 Attorneys for Plaintiffs

9
10 **VIII. JURY DEMAND**

11 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs hereby
12 request a trial by jury.

13 Dated: September 28, 2007.

14 Respectfully submitted,

15 BRANCART & BRANCART

16 /s/ Elizabeth Brancart

17 Elizabeth Brancart

18 Attorneys for Plaintiffs

19 **IX. CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

20 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other
21 than the named parties, there is no such interest to report.

22 Dated: September 28, 2007.

23 Respectfully submitted,

24 BRANCART & BRANCART

25 /s/ Elizabeth Brancart

26 Elizabeth Brancart

27 Attorneys for Plaintiffs

PROOF OF SERVICE

I am over the age of 18 and am not a party to the within action. My business address is 8205 Pescadero Road, Loma Mar, California 94021.

On September 28, 2007, I served a true and correct copy of the following document(s):

FIRST AMENDED CLASS ACTION COMPLAINT; DEMAND FOR TRIAL BY JURY; CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

upon the following person(s):

Ms. Sara Allman, Allman & Nielsen, 100 Larkspur Landing Circle, Suite 212
Larkspur, CA 94939; and

Mr. John S. Blackman, Farbstein & Blackman, 411 Borel Ave., Suite 425, San
Mateo, CA 94402

	BY HAND DELIVERY: By causing such document(s) to be delivered by hand to the above person(s) at the address(es) set forth above.
	BY MAIL: By placing a copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States mail at Loma Mar, California, addressed as set forth above.
	BY THIRD-PARTY COMMERCIAL CARRIER (OVERNIGHT DELIVERY): By delivering a copy thereof to a third-party commercial carrier, addressed as set forth above, for delivery on the next business day.
	BY FACSIMILE: By transmitting the above document(s) to the facsimile number(s) of the addressee(s) designated above.
xx	BY ELECTRONIC TRANSMISSION OF THE "NOTICE OF ELECTRONIC FILING:" By electronically filing the document(s) (All counsel are "Filing Users")

I certify that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 28, 2007, at Loma Mar, California.

/s/ Elizabeth Brancart
Elizabeth Brancart